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433 Highland Road,
London, Ontario,
January 30, 1964.

The Ontario Committee on Taxation

Gentlemen:

The attached brief on the Succession Duty Act is intended to cover only that portion of the Act applicable to annuities whose present value is used for succession duty purposes, such present value being made up of the husband's equity and the unfunded or non-guaranteed portion contributed by the employer.

While this brief is being submitted over my signature, a number of officials associated with the older and larger pension funds of Ontario have been consulted, and with all respect, I can assure you, Gentlemen, that since thousands of Ontario residents will be affected by the disposition of this brief, it will definitely be watched by a great many interested parties.

Sincerely,

R. M. Laurie

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B.A. Sc., F.IEEE.

BRIEF

PRESENTED TO

THE ONTARIO COMMITTEE ON TAXATION

BY

R.M. LAURIE
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January 30, 1964

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THE PROBLEM

The application of that portion of the Ontario Succession Duty Act as applied to annuities, the present value of which is comprised of the employee's equity and the non-guaranteed portion provided by the employer. Also, the picture of existing inequities.

1. After some study it has been pretty well admitted by those associated with the early writing of this Act that it was not intended to cover annuities of the type referred to above.

2. Due to various control provisions of the older and larger pension plans, it would appear to be almost impossible to apply the terms of the Act with any uniformity, for example:
   (a) Options vary as to the disposition of the husband's equity in the fund. In some cases the widow has no option and has to accept a pension. This, of course, makes a distinct difference in the evaluation of the estate.
   (b) In some cases the pension ceases upon death or remarriage of the widow.
   (c) The existing statute levies tax on the capitalized amount of the pension to which a widow is entitled based on her life expectancy and provides no alleviation where in fact this amount is never paid.

   While this may be legal it certainly would not rate very high in a code of morals. It may be noted here that the Federal Act has alleviated the problem by re-opening where a widow dies or remarries within four years, resulting in a premature termination of pension payments. There is no such re-opening provision in the Ontario Act as it stands. The Act does permit a widow, in lieu of a lump sum payment, to elect to pay instalments of tax on her pension over the years of her life expectancy but the full amount

must be paid where she dies before the expiry of this period, which may, as indicated above, result in the Province collecting taxes on money never received by the taxpayer.

3. The references in the Act covering the subject problem are extremely vague, and practically impossible for an educated layman to comprehend. In fact, during the investigation of this problem it was obvious that even the Legal Profession had different interpretations of that portion of the Act to which we refer.

RECOMMENDATION

1. That the portion of the Act covering annuities be re-written with greater clarity.

2. That the method of payment of Succession duties on the type of annuities under discussion be placed on the "pay as you receive" basis, similar to the Income Tax regulations.

After some study it is believed that this method of payment would be fair, and over a period of time should not deprive the Province of any revenue.

For example:

At the present the method of evaluating the life income from a pension arrangement is that the yearly annuity is multiplied by a factor based upon the life expectancy of the beneficiary. This amount is then included as part of the aggregate value of the estate in order to establish the rate of tax. This present value amount is also used to establish the additional rate that is applicable in respect of the portion of the estate going to the individual beneficiary involved. Inasmuch as the present value in these cases is determined in relation to a formula of life expectancy that has been the result of many years' experience in judging the length of life of such people, it stands to reason that the government would receive exactly the same amount of revenue that it now receives if every beneficiary were required to pay annually an amount equal to the total tax applicable to the life income portion of the aggregate value of the estate divided by the number of years of life expectancy. Thus, a person with a life expectancy of 20 years who dies within two years of the commencement of this pension would pay tax of 2/20ths. of the amount someone else would pay who lived out the 20 years. Another person who lived 25 years, instead of the 20 years that the life expectancy table suggested, would pay 25/20ths. of the calculated amount on the basis of the life expectancy.

An alternative to the above would be to keep the present prepayment provision but provide that where a widow dies or remarries resulting in a cessation of pension payments before she has received the full amount on which duty has been paid, that there is payable to either the widow or her estate an amount equal to the over payment of duty.

Such an amendment to the existing provision would also deal with the case where a widow has elected to make staggered payments over her life expectancy and should provide that where she dies or remarries before the life expectancy expires that there will be no further or other payments required.

This would mean in any of the above proposals, that a widow would only pay tax on what she actually receives from a pension annuity which, it is respectfully submitted, is fair and morally defensible. From an administrative point of view there should be no great difficulty in setting up any one of these proposals.